



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants: Jonathan S. Stamler and Andrew J. Gow
Application No.: 08/796,164 Group: 1654
Filed: February 6, 1997 Examiner: B. Celsa
For: MODIFIED HEMOGLOBINS, INCLUDING NITROSYLHEMOGLOBINS, AND USES THEREFOR

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REQUEST FOR RECONSIDERATION AND/OR PETITION FROM REQUIREMENT FOR
RESTRICTION UNDER 37 C.F.R. § 1.144

Box DAC
Assistant Commissioner for Patents
Washington, D.C. 20231

Sir:

Applicants request reconsideration and withdrawal of the Supplemental Restriction in the above-referenced application, made in the Office Action mailed from the United States Patent and Trademark Office on March 30, 1999. In this Office Action, Claims 42, 45, 46, and 63-68 were withdrawn from consideration, and this Supplemental Restriction was made final, albeit being made for the first time. Applicants note that a request for reconsideration is required to maintain the option of petitioning the Commissioner for review of the requirement for restriction under 37 C.F.R. § 1.144. Therefore, in the alternative, if in making the restriction final, Applicants have been denied the opportunity to request reconsideration, Applicants petition the

Commissioner to reconsider and withdraw the Supplemental Restriction for the reasons set forth herein.

Claims 42, 45, and 46 had been amended, and Claims 63-68 had been added in an Amendment mailed to the United States Patent and Trademark Office on January 6, 1999. Amendments to Claims 42 and 45 narrowed the conditions of the claimed methods; the conditions in Claims 42 and 45 as amended were encompassed in the originally-filed Claims 42 and 45 which were placed in Group IV with the Restriction Requirement made in the Office Action dated January 13, 1998. The amendment of Claim 46 corrected the species of the product of the method, so that now Claim 46 is to a method for making S-nitrosohemoglobin, which is a term that includes SNO-Hb[FeII]O₂ and SNO-Hb[FeII]. Claims 63-67 are drawn to methods for making SNO-hemoglobin (another term for S-nitrosohemoglobin) and methods for making nitrosylhemoglobin. Claim 68 is drawn to a composition comprising nitrosylhemoglobin.

The claims of elected Group IV, as stated in the Office Action of January 13, 1998, setting forth the Election/Restriction, were as follows:

Claims 10-22, and 24-32, and 40-46 drawn to deoxy/oxy nitrosylated hemoglobin and SNO-Hb[FeII]O₂ or SNO-Hb[FeII] preparation and a method of making and use thereof, classified in class 514, subclass 6+.

The invention of Claims 42, 45, and 46, as amended, and of Claims 63-68 are encompassed by the description of the Group IV claims. No other claims to methods for making nitrosylhemoglobin or to methods for making S-nitrosohemoglobin or to a composition comprising nitrosylhemoglobin were classified as belonging in a different group in the Restriction set forth in the Office Action of January 13, 1998. Searches of prior art have already been done that would uncover references describing methods to make these compounds using various conditions.

Applicants request that amended Claims 42, 45, and 46, and added Claims 63-68 be examined together with Claims 10-22, 24-32, 40, 41, 43, and 44. Please charge any petition fees which may be due in this matter to Attorney's Deposit Account No. 08-0380. A copy of this letter is enclosed for accounting purposes.

Respectfully submitted,

HAMILTON, BROOK, SMITH & REYNOLDS, P.C.

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